

Department of Health
Notice of Rulemaking Hearing
Board of Medical Examiners
Committee for Clinical Perfusionists
Division of Health Related Boards

There will be a hearing before the Tennessee Board of Examiners' Committee for Clinical Perfusionists to consider the promulgation of amendments to rules and a new rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-1-138, 63-6-101, 63-28-102, 63-28-110, 63-28-114, 63-28-117, 63-28-118, and Public Chapters 234 and 467 of the Public Acts of 2005. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Cumberland Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 3:30 p.m. (CST) on the 16th day of December, 2005.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, 1st Flr., Cordell Hull Building, 425 5th Ave. N., Nashville, TN 37247-1010, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact: Jerry Kosten, Regulations Manager, Division of Health Related Boards, 425 Fifth Avenue North, First Floor, Cordell Hull Building, Nashville, TN 37247-1010, (615) 532-4397.

Substance of Proposed Rules

Amendments

Rule 0880-11-.19 Committee Members, Officers, Consultants, Records, and Declaratory Orders, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by deleting paragraph (4) in its entirety and substituting instead the following language, and is further amended by adding the following language as new paragraph (7), so that as amended, the new catchline and the new paragraphs (4) and (7) shall read:

0880-11-.19 Committee Members, Officers, Consultants, Records, Declaratory Orders, and Screening Panels.

- (4) The Committee authorizes the member who chaired the Committee for a contested case to be the agency member to make the decisions authorized

pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

- (7) Screening Panels - The Committee adopts, as if fully set out herein, rule 1200-10-1-.13, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the screening panel process.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-138, 63-6-101, 63-28-114, 63-28-117, 63-28-118, and Public Chapter 234 of the Public Acts of 2005.

Rule 0880-11-.20 Advertising, is amended by deleting the language of the rule in its entirety and substituting the following language as new paragraphs (1) through (5):

- (1) Policy Statement. The lack of sophistication on the part of many in the health care community concerning clinical perfusion, the importance of the interests affected by the choosing of clinical perfusionists and the foreseeable consequences of unrestricted advertising by clinical perfusionists which is recognized to pose special possibilities for deception, require that special care be taken by clinical perfusionists to avoid misleading the health care community. Clinical perfusionists must be mindful that the benefits of advertising depend upon its reliability and accuracy. Since advertising by clinical perfusionists is calculated and not spontaneous, reasonable regulation designed to foster compliance with appropriate standards serves the public interest without impeding the flow of useful, meaningful, and relevant information to the health care community.
- (2) Definitions
 - (a) Advertisement – Informational communication to the health care community in any manner designed to attract attention to the clinical perfusionists which are licensed to practice in Tennessee.
 - (b) Licensee - Any entity holding a license as a clinical perfusionist in the State of Tennessee. Where applicable this shall include partnerships and/or corporations.
 - (c) Material Fact - Any fact which a health care provider would need to know or rely upon in order to make an informed decision concerning the choice of clinical perfusionists to serve its particular needs.
 - (d) Health Care Community – Shall mean hospitals, ambulatory surgical treatment centers, medical practices, individual physicians, and other health care providers with legal authority to utilize clinical perfusionists.
- (3) Advertising Content. The following acts or omissions in the context of advertisement by any licensee shall constitute unprofessional conduct, and subject

the licensee to disciplinary action pursuant to T.C.A. §63-28-117(3).

- (a) Claims that the services performed, personnel employed, materials or office equipment used are professionally superior to that which is ordinarily performed, employed, or used, or that convey the message that one licensee is better than another when superiority of services, personnel, materials or equipment cannot be substantiated.
- (b) The misleading use of an unearned or non-health degree in any advertisement.
- (c) Promotion of professional services which the licensee knows or should know is beyond the licensee's ability to perform.
- (d) Techniques of communication which intimidate, exert undue pressure or undue influence over a prospective client.
- (e) Any appeals to an individual's anxiety in an excessive or unfair manner.
- (f) The use of any personal testimonial attesting to a quality of competency of a service or treatment offered by a licensee that is not reasonably verifiable.
- (g) Utilization of any statistical data or other information based on past performances for prediction of future services, which creates an unjustified expectation about results that the licensee can achieve.
- (h) The communication of personal identifiable facts, data, or information about a patient without first obtaining patient consent.
- (i) Any misrepresentation of a material fact.
- (j) The knowing suppression, omission or concealment of any materials fact or law without which the advertisement would be deceptive or misleading.
- (k) Statements concerning the benefits or other attributes of medical procedures or products that involve significant risks without including:
 - 1. A realistic assessment of the safety and efficiency of those procedures or products; and
 - 2. The availability of alternatives; and
 - 3. Where necessary to avoid deception, descriptions or assessment of the benefits or other attributes of those alternatives.

- (l) Any communication which creates an unjustified expectation concerning the potential results of any procedure.
 - (m) Failure to comply with the rules governing advertising records.
 - (n) Misrepresentation of a licensee's credentials, training, experience, or ability.
 - (o) Failure to include the corporation, partnership or individual licensee's name, address, and telephone number in any advertisement. Any corporation, partnership or association which advertises by use of a trade name or otherwise fails to list all clinical perfusion personnel practicing at a particular location shall:
 - 1. Upon request provide a list of all clinical perfusion personnel practicing at that location; and
 - 2. Maintain and conspicuously display at the licensee's office, a directory listing all clinical perfusion personnel practicing at that location.
 - (p) Failure to disclose the fact of giving compensation or anything of value to representative of the press, radio, television or other communicative medium in anticipation of or in return for any advertisement (for example, newspaper article) unless the nature, format or medium of such advertisement make the fact of compensation apparent.
 - (q) After thirty (30) days of the licensee's departure, the use of the name of any clinical perfusion personnel formerly practicing at or associated with any advertised location or on office signs or buildings. This rule shall not apply in the case of a retired or deceased former associate who practiced in association with one or more of the present licensees if the status of the former associate is disclosed in any advertisement or sign.
 - (r) Stating or implying that a certain licensee provides all services when any such services are performed by another licensee.
- (4) Advertising Records and Responsibility
- (a) Each licensee who is a principal partner, or officer of a firm or entity identified in any advertisement, is jointly and severally responsible for the form and content of any advertisement. This provision shall also include any licensed professional employees acting as an agent of such firm or entity.
 - (b) Any and all advertisement are presumed to have been approved by the

licensee named therein.

- (c) A recording of every advertisement communicated by electronic media, and a copy of every advertisement communicated by print media, and a copy of any other form of advertisement shall be retained by the licensee for a period of two (2) years from the last date of broadcast or publication and be made available for review upon request by the Board or its designee.
 - (d) At the time any type of advertisement is placed, the licensee must possess and rely upon information which, when produced, would substantiate the truthfulness of any assertion, omission or representation of material fact set forth in the advertisement or public information.
- (5) Severability. It is hereby declared that the sections, clauses, sentences and part of these rules are severable, are not matters of mutual essential inducement, and any of them shall be rescinded if these rules would otherwise be unconstitutional or ineffective. If any one or more sections, clauses, sentences or parts shall for any reason be questioned in court, and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision or provisions so held unconstitutional or invalid, and the inapplicability or invalidity of any section, clause, sentence or part in any one or more instance shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-28-114, 63-28-117, and Public Chapter 467 of the Public Acts of 2005.

New Rule

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0880-11-.03 Use of Titles

0880-11-.03 Use of Titles. Any person who possesses a valid, unsuspended and unrevoked license issued by the Committee has the right to use the title “Licensed Clinical Perfusionist” or “L.C.P.” and to practice perfusion, as defined in T.C.A. §§ 63-28-102. Violation of this rule or T.C.A. § 63-28-110 regarding use of titles shall constitute unprofessional conduct and subject the licensee to disciplinary action.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-28-102, 63-28-110, 63-28-114, 63-28-117, and Public Chapter 467 of the Public Acts of 2005.

Contact who can answer questions concerning this notice of rulemaking hearing, technical contact for disk acquisition, and person who will approve final copy for

publication: Jerry Kosten, Regulations Manager, Division of Health Related Boards, 1st Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010 615-532-4397.

I certify that this is an accurate and complete representation of the intent and scope of rulemaking proposed by the Tennessee Board of Medical Examiners' Committee for Clinical Perfusionists

Robbie H. Bell, Director
Health Related Boards

Subscribed and sworn to before me this the 25th day of October, 2005.

Notary Public

My commission expires on the 25th day of March, 2006.

The notice of rulemaking set out herein was properly filed in the Department of State on the ____ day of _____, 2005.

Riley C. Darnell
Secretary of State

By: _____